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Labor & Employee Relations Management Guidance Bulletin

Topic: ADR (Alternative Dispute Resolution)

Montgomery County Government and the Union share a joint interest in resolving disputes relating to discipline at the lowest level possible. To that end, ADR is a pre-disciplinary settlement conference conducted in accordance with the provisions of the collective bargaining agreement.

Reference Guide

MC GEO: Article 10.14 (a)(7) of the Collective Bargaining Agreement (CBA) states that the Alternative Dispute Resolution (ADR) process is part of the informal resolution process of the contract grievance procedure.

When ADR Applies

After a Statement of Charges (SOC) for disciplinary action is issued to an employee, the employee, the Union and the County voluntarily agree to engage in a Pre-Discipline Settlement Conference. Prior to the ADR conference, the Union receives a copy of any supporting documentation such as pertinent department policies, procedures, etc., for representation of the employee.

Prior to commencement of the ADR process, the employee must affirm if they wish to participate in the ADR process. As a condition of participation, the employee must sign a waiver acknowledging that their participation is voluntary and certifying their understanding that, irrespective of the outcome, their participation in the process precludes them from filing an appeal with the Merit System Protection Board on the subject matter of the ADR.

Although ADR is a voluntary process, departments are expected to participate in the process.

ADR Committee

The Committee is comprised of a three member panel, chaired by OHR, that includes a representative from management and a representative from the Union. The Union appoints the union representative and the representatives from OHR and management are appointed by OHR. Panel members may not hear cases from their own departments. The members caucus and reach agreement on a recommendation.

ADR Ground Rules and Process

- The Union formally submits the request for ADR and forwards a copy of the SOC to OHR.

Management Guidance Bulletin: ADR

- At the request of the Union, the Department must provide copies of all policies, procedures and other relevant information referenced in the SOC that was used as justification for the proposed disciplinary action.
- Along with the Union, OHR establishes and distributes the ADR schedule. Cases are scheduled in order of date received; however, dismissal will be given priority.
- Departments are allowed 2 representatives in the ADR conference: one being the immediate supervisor, if possible, or an individual(s) that has first hand knowledge of the incident giving rise to the proposed disciplinary action and has decision making authority to either accept or reject the ADR panel's recommendation.
- Department representatives and ADR panel members do not engage in discussions of an individual case before the settlement conference.
- The Department representative and the Union are each permitted 30 minutes to present all relevant information (25 minutes initial presentation, 5 minute rebuttal). The Committee will defer any questions until the both parties have completed their presentation.
- After completion of both parties' presentations, the Committee meets in private to attempt to reach consensus on a recommendation to the parties as to how to settle the matter.
- The Department, the Union and the employee must accept or reject the Committee's recommendation at the time the conference is held. If no agreement is reached, the Department may proceed with the SOC as presented. The Union may appeal the action by filing a grievance.
- The proceedings are confidential. The Committee recommendation may not be referenced in any future proceeding and will not be admissible as evidence in any arbitration or grievance.

ADR STRATEGY

The department must articulate the nature of the misconduct and correspondingly establish that the level of the proposed disciplinary action is both reasonable and appropriate. Although ADR is an "informal" procedure, department representatives should be well prepared and organized to present the department's arguments and rationale. One of the department's two representatives should either be the employee's immediate supervisor or must have first hand knowledge of the events giving rise to the proposed action. Don't read the SOC verbatim in the ADR. The Committee has a copy of the SOC and they have read it. Provide a factual account of the events giving rise to the proposed disciplinary action and discuss the reasons and rationale for the level of discipline being proposed. Your presentation should answer the following questions:

1. What is the basis for the offense (e.g., violated an established policy or procedure, misconduct, etc.) and how does it related to the employee's duties, position, and/or responsibilities?
2. What were the consequences of the employee's actions?
3. Are there any mitigating or aggravating circumstances relating to the offense?

Management Guidance Bulletin: ADR

4. Has the employee's work record (e.g., performance, length of service, etc.) been taken into consideration?
5. What prior corrective and/or disciplinary actions have been taken (e.g., training, counseling, oral and written warning, suspension, etc.)?
6. Is the proposed discipline consistent with the department's practice in addressing the same or like offenses for similarly situated employees?
7. Is the proposed discipline progressive in nature? If not, what is the basis of imposing the elevated level of discipline (e.g., the gravity of the offense)?

Be reasonable and composed in your presentation and discussion. Do not give the impression that you have a bias towards the employee.

Expect Panel members to ask follow-up questions for clarification and/or additional information.

It is wise to anticipate the Union's arguments, e.g., disparate treatment, factual disagreements, etc., in advance of the ADR and, as much as possible, address those in your presentation.

What is accomplished through the ADR process?

- Provides an opportunity to resolve disciplinary actions and selective termination cases without grievances, arbitration or litigation
- Fewer grievances, saving money and staff time
- Better relationship between the County and the Union
- Greater control over disciplinary matters
- Creates an environment that promotes collaboration
- Provides a forum for the Union and management to present relevant information regarding the proposed disciplinary action

Advantages of the ADR Process

- Legitimizes the disciplinary process
- Motivates managers to more thoroughly document employee behavior/performance
- Reduces employee skepticism about being targeted
- Helps employees to accept culpability for their actions/behavior
- Mitigates friction between the parties
- Reduces the high cost of administering disciplinary processes
- Gets the employee back to work expeditiously
- Mitigates complaints that the Union protects "bad employees"

The ADR form and committee recommendation cannot be used in any future proceeding and will not be admissible evidence in any arbitration or grievance filing.

(Management Guidance Bulletins represent OHR's interpretation of collective bargaining agreement language. They do not necessarily represent labor-management agreement and are intended to provide guidance to those who administer the contracts.)